

Zoning Board of Adjustment
April 24, 2013

Betsy Coes was sworn in as Zoning Board of Adjustment member with a term ending March 2016.

Attendance: Kent Lawrence, Betsy Coes, and Judy Hurlbert. Absent from the meeting was Dave Sweet and Catherine Nelson.

Kent Lawrence opened the meeting at 7pm to hear three variance requests submitted by Bill Meserve and Bob Elliott.

Case 13-04-24-1 –Meserve/Elliott-12 River Road

Kent disclosed that he has worked for the applicants in the past but felt there was no prejudice one way or another. The other board members were okay with Kent hearing the case.

Bill Meserve stated he met with building inspector Larry Shaw regarding his building permit to raze and renovate a portion of his home at 12 River Rd, and was rejected and needed three variances. Mike Cuomo from Rockingham County Conservation inspected the site and measured the home to be 115 feet from the river and because the home is within the 150 foot shoreland protection zone it does not meet the setback requirements of Article IX, Section 9.3.5.2. The portion of the home to be renovated has a crawl space. The applicants would like to tear down the structure and put it back up in the style it would have been in the late 1700's. The structure will be taller and the second floor would be used for storage. They wish to expand the foundation by 1%; pushing it back from the river and making it a more livable space.

Bill said they intend to redirect the runoff from the gutters to the field where there will be a cistern. The runoff currently flows into the river. They intend to maintain the natural buffer and preserve the uses adjacent to the shoreline. Bill added that the property is 12.1 acres and abuts the waste water treatment plan.

Bill read the variance into the record.

1. **Describe the unnecessary hardship created on the property based on the existing zoning ordinances:** The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment. It is reasonable to grant the variance for the owners to improve the property as the existing center structure is structurally and mechanically aged and consists of a footprint that is not practical to remain as it is. The new footprint will result in the structure being moved back further from the protected area. There will be no increased impact on the shoreland protection zone or character of the area. Denying it would result in significant increased costs to the applicant.
2. **Explain how granting the variance will result in substantial justice:** The variance will allow the owner to improve the property without impacting water quality and the general public will realize no increased gain by the denial of a variance.
3. **Explain how a variance would be consistent with the spirit and intent of the ordinance:** The variance will be consistent with the spirit and intent of the ordinance in that the existing building footprint will be minimally increased and measures will be taken to improve building run-off and moving the new center structures further away from the river thus having no impact on the intent of the shoreland protection restrictions.

Article IX-9.1.1 to promote the preservation and maintenance of surface water quality in Newfields. The quality of run-off from the structure will be improved by the elimination of the existing direct discharge to the river and the redirection of the run off away from the river to a storage and treatment system.

Article IX-9.1.2 to promote and protect aquatic and terrestrial habitat associated with the intertidal and riparian areas. The structure is located well above the intertidal and riparian areas, approximately 40 vertical feet above the river. The new footprint of the structure will be moved further back from the protected zone, increase minimally in size, and the run-off water quality will be improved.

Article IX-9.1.3 to preserve and enhance those aesthetic values associated with the natural shoreline. There will be no change to the present aesthetic value of the shoreline as the structure will be restored and layout will remain generally as it currently exists. A buffer strip of natural vegetation, greater than the 75 foot requirement of section 9.4.1, will be maintained along the river.

Article IX-9.1.4 to preserve those uses that can be appropriately located adjacent to the shorelines. The home has existed since the late 1700's as a residence and farm and will continue to be used in the same manner. There will be no significant increase in the building footprint and measures to enhance building rainwater run-off will be part of the project plan.

4. **Explain how the variance will not result in a diminution in value of surrounding properties:** The value of the property will be increased through the improvement of the existing structure and architecture. The use will remain the same and will not impact the run-off water quality.
5. **Discuss how the variance would not be contrary to the public interest:** The granting of the variance will not alter the character of the locality and the existing structure footprint will be minimally increased. There will be improved containment and treatment of the building run-off with a result of no adverse effect on the public interest.

Comments were taken from the audience.

Abutter Louisa McClure asked about the cistern and whether or not she would see it from her home. Bill explained that the cistern is in the ground and will not be visible.

The public hearing was closed and the Board deliberated.

Kent explained that none of the applicant's buildings are 150 feet from Squamscott River. The structures were there before the ordinances came into effect. The applicants are removing a section of their home and replacing it with a similar size building. The 1% increase in footage is not a big impact.

The Board voted on the five criteria.

1. The variance will not be contrary to the public interest. Yes-3, No-0
2. The spirit and intent of the ordinance is observed. Kent commented that the intent of the shoreland protection act is to preserve the natural vegetation within 150 feet from the river. The building foot print is moving back a bit and at the same time a drainage system is being

installed to prevent drainage from going into the river. Betsy added that the amount of run-off cannot be significant. Yes-3, No-0

3. Substantial justice is done. Yes-3, No-0
4. The values of surrounding properties are not diminished. Yes-3, No-0
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Betsy said she did not see the hardship in this case. There must be something unique and unusual with the property for a hardship to exist. There is nothing different or distinct about the property.
Kent stated that it is a pre-existing building before the ordinances came into effect and it is fairly old.

Applicant Bill Meserve was allowed to speak during the deliberation. He said the main reason for the renovation is to make the building more efficient. Financial hardships have come into play in previous cases. Bob added that the size of the addition is miniscule compared to the entire 12 acres.

Betsy reiterated that there must be something unique about the property to satisfy hardship. There is nothing preventing the applicants from renovating on the same footprint.

Kent said that the adoption of the shoreline protection act has presented this property with unique challenges. The difficulty is that it is in the shoreland protection zone and any changes require coming to the zba to discuss the change and impacts.

In Betsy's opinion, being a pre-existing building before the ordinance does not enter in to it. She is a "hardship purist" and finds it difficult to prove hardship in this case.

Bill Meserve commented on a recent case in the old village that was allowed to build within the setback due to the shape of the lot and the fact that the home preceded our zoning.

Bill also said because of the odd layout it will cost considerable more money to renovate on the same footprint.

Because only three members were present at the hearing all three must vote yes on all five criteria for the variance to be granted. A vote was taken. Yes-1, No-1 and the variance was denied. Judy did not vote but when asked how she would have voted she commented that she had no problem with the renovation but when it came to the hardship she would vote no.

The applicants requested a continuance on the remaining two variances until next month when a full board would be present. A motion was made by Kent and seconded by Judy to accept the request for continuance until May 29, 2013. All were in favor and the motion carried.

The meeting adjourned at 8:10pm

Kent Lawrence
ZBA Chairman

